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Human rights of migrants

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the human rights of migrants, Jorge Bustamante, submitted in accordance with Commission on Human Rights resolution 1999/44.

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Report of the Special Rapporteur on the human rights of migrants

Summary

The present report provides a brief summary of the visits undertaken by the Special Rapporteur during the period from June 2006 to 1 August 2007.

The report also highlights the main focus of the Special Rapporteur's report to the Human Rights Council at its fourth session, namely, border control, expulsion, and conditions for the admission and stay of migrants.

Lastly, the Special Rapporteur encourages Member States to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

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I. Introduction

1. The present report is the sixth report to be submitted to the General Assembly by the Special Rapporteur on the human rights of migrants and the third submitted by the present Special Rapporteur, Jorge Bustamante. It covers activities carried out during the period from June 2006 to 1 August 2007.

II. Mandate and communications

2. The activities of the Special Rapporteur are carried out in accordance with Commission on Human Rights resolution 1999/44, in which the Commission established the mandate and defined its functions. At its sixty-first session, the Commission decided, by its resolution 2005/47, to extend the Special Rapporteur's mandate for a further three years.

3. The Special Rapporteur continues to receive allegations of violations of human rights of migrants. After careful consideration, he engages with a number of Member States regarding specific cases. He will submit a report containing all his communications to the Human Rights Council at its forthcoming session.

III. Country visits

4. During the reporting period, the Special Rapporteur travelled on official missions to the Republic of Korea between 5 and 11 December, to Indonesia between 12 and 21 December, and to the United States of America between 30 April and 18 May.

A. Republic of Korea

5. Between 5 and 11 December 2006, the Special Rapporteur visited the Republic of Korea. The main purposes of the visit were to assess the prevailing situation of migrants living in the Republic of Korea and to promote the ratification of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. During and after his visit the Special Rapporteur encouraged the use of incentives for voluntary return rather than expulsion, in accordance with procedural guarantees against forced return.

6. The Special Rapporteur drew attention to the immigration and labour laws in the light of international human rights treaties that the Government of the Republic of Korea has signed or ratified. In this regard, he paid special attention to unskilled migrant workers. The Special Rapporteur recommended that every employer responsible for violating the human rights of migrant workers should be brought promptly to justice, including through criminal prosecutions.

7. With regard to female foreign spouses, the Special Rapporteur recommended that the Government relax the requirements to apply for naturalization for the victims of domestic violence. Migrant women who have a child with men who are nationals of the Republic of Korea should be entitled to residency rights, regardless of their marriage status. In the case of domestic violence, moreover, foreign victims must have access to adequate interpretation facilities in police stations and the

courts. Victims of abuse by international marriage agencies and private marriage brokers must also be registered and classified after a screening process as victims of human trafficking.

B. Indonesia

8. At the invitation of the Government of Indonesia, the Special Rapporteur visited Indonesia from 12 to 21 December 2006. The Special Rapporteur spent International Migrants Day (18 December) in Jakarta with a coalition of over 60 non-governmental organizations (NGOs) which had organized events at which he was also able to meet with migrants themselves.

9. The main objective of the mission was to examine all aspects of migration from Indonesia, giving particular attention to the situation of female domestic workers.

10. During his visit, the Special Rapporteur observed at first hand the situation in border areas: on the island of Batam, in the area of Tanjung Pinang in Riau Island Province and at Entikong in West Kalimantan Province. The Special Rapporteur had the opportunity to meet and interview female migrant workers who had returned to Indonesia. Some of the most poignant testimonies were presented by female domestic workers who had escaped through the jungle or had been deported after instances of abuse at the hands of employers and employment agencies in receiving countries. These abuses included confiscation of passports and/or personal belongings, threats, physical abuse and corporal punishment.

11. The Special Rapporteur encourages Indonesia to uphold its international and internal commitments to protect migrants in general, including those living both inside and outside the country (i.e. internal and international migrants), and hopes that Indonesia will ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

C. United States of America

12. The Special Rapporteur visited the United States from 30 April to 18 May at the invitation of the Government. The Special Rapporteur met with a variety of organizations and state, national and local agencies and officials. Numerous individuals provided testimony about migrant conditions experienced by themselves and/or their family members.

13. During his visit, the Special Rapporteur toured the United States border with Mexico and watched United States immigration officials at work. He met there with officials of the US Customs and Border Protection, a division of the Department of Homeland Security, spending half a day with border patrol officers in the San Diego sector. In Los Angeles, the Special Rapporteur conducted site visits, listened to presentations and witnessed community testimony on the federal enforcement system (including on raids, detention, workers' rights and the criminalization of immigrants).

14. In Atlanta, Georgia, the Special Rapporteur attended a regional NGO briefing and a press conference, organized by the US Human Rights Network and its member organizations. He also attended a reception in Atlanta where he was able to meet

with members of the Georgia House of Representatives and the Georgia Senate. During the NGO briefing in Atlanta, the Special Rapporteur heard from migrants and migrants human rights advocates who had travelled from across the southern United States.

15. In New York, the Special Rapporteur heard individuals testify about the post-9/11 backlash, including the experiences of 11 September detainees. The visit was concluded in Washington, D.C., with meetings with senior officials of the Department of Homeland Security and the State Department.

16. Migrant rights issues raised at these various meetings included, but were not limited to, the following: indefinite detention; mandatory detention; racial profiling; family separation; aggressive raids; anti-immigrant legislation; linguistic, racial, ethnic, gender and sexual-orientation discrimination; State violence; wage theft; forced labour; limited access to health care and education; the growing anti-immigrant climate (including the post-9/11 backlash); and significant limitations on due process and judicial oversight.

17. The Special Rapporteur is discussing with Member States the possibility of undertaking further official missions in 2008. He has so far received positive indications from the Governments of Guatemala, Mexico and South Africa. The Special Rapporteur wishes to thank these Governments for their positive response.

IV. Other activities

A. Human Rights Council

18. The Special Rapporteur attended the fourth session of the Human Rights Council on 22 March, where he presented his second annual report. That report focused on five main themes: border control and measures to reduce and address irregular migration; expulsion; conditions for admission and stay; the rights of migrants; and their protection. In his statement to the Council, the Special Rapporteur highlighted the pressing need to address the complex patterns of human rights abuse directed against migrants. He stressed that more than one third of migrants remained undocumented, residing far from their homes and families; those people, especially undocumented women and children, were one of the most vulnerable groups and routinely face violence, hostility and various abuses. The Special Rapporteur also noted that despite the fact that the International Convention on the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly in 1990, was one of the seven basic instruments defining a global human rights protection regime for migrant workers, Governments still needed to be convinced that its ratification was necessary. In his concluding remarks the Special Rapporteur reiterated the need for a comprehensive approach to migrants' human rights in order to ensure that migrants had a framework for protection and enjoyed rights appropriate and adequate to their particularly vulnerable situation.

19. During the interactive dialogue, the representative of Indonesia congratulated the Special Rapporteur on his report and reiterated the commitment made by the Indonesian Minister of Law and Human Rights to the effect that Indonesia would ratify the International Convention for the Protection of the Human Rights of All

Migrant Workers and Members of Their Families in the near future. The representative of the Republic of Korea expressed his full support for the Special Rapporteur's independence and praised his report, referring to it as an opportunity to assess the situation concerning the human rights of migrants in that country and to follow up on the conclusions and recommendations made by the Special Rapporteur.

B. Other meetings and conferences

20. The Special Rapporteur was invited by Sonia Soto Rios, the representative of the Bolivian Ombudsman, to present a paper at the Eighth International Conference of National Human Rights Institutions held from 23 to 26 October 2006 in Santa Cruz.

21. The Special Rapporteur was also a keynote speaker at the Conference on Trafficking and Migration in Belfast, Northern Ireland. His lecture, entitled "Trafficking and vulnerability of migrants: a conceptual framework", formed part of the Conference's attempt to promote a human rights framework to address the trafficking of human beings.

22. At the invitation of Teresa Aranda Romero, Executive Vice-President of the Atman Foundation, the Special Rapporteur attended the three-day Atman Encounter of International Debate 2007, in Madrid, where he participated on 15 June 2007 as a panellist in a debate on "Migration politics, democracy and cultural diversity".

23. Lastly, the Special Rapporteur met with other mandate holders during the annual meeting of special rapporteurs, special representatives, independent experts and chairpersons of working groups of the Human Rights Council, which was held in Geneva from 18 to 22 June 2007 to discuss common practices and procedures.

V. Conclusion

24. **The Special Rapporteur takes this opportunity to thank the Governments of Indonesia, the Republic of Korea and the United States of America for their assistance and hospitality during his country visits last year. He also extends his thanks to the Governments of Mexico, Guatemala and South Africa, which have accepted his request to visit their countries. He expresses his wish to continue engaging with all Member States in an open dialogue on the human rights of migrants. The Special Rapporteur will submit his annual report to the Human Rights Council.**